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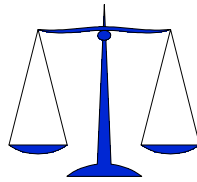
# EMPLOYEE TRUST FUNDS'



## ADMINISTRATIVE APPEAL PROCESS

Department of Employee Trust Funds  
P. O. Box 7931  
Madison, WI 53707-7931





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## ***I. INTRODUCTION***

This brochure is designed to assist you in understanding the administrative appeals process as it relates to the Department of Employee Trust Funds (DETF). **The information contained in this brochure is not intended to substitute for the legal advice and assistance of an attorney.**

An administrative hearing establishes a record of facts in a particular case. The following information is designed to provide you with an outline of the administrative hearing process. You do not have to pay any filing fees or court costs. However, you are responsible for any expenses associated with hiring your own attorney or paying for witnesses to appear and testify on your behalf at the hearing.

Chapter ETF 11 of the Wisconsin Administrative Code governs appeals to the boards of the DETF.

If, after you have read the following, you have any questions relating to the appeals process, please contact the Appeals Coordinator at the following address:

Appeals Coordinator  
Department of Employee Trust Funds  
801 West Badger Road  
P O Box 7931  
Madison WI 53707-7931

Phone: (608) 267-2417  
Fax: (608) 267-0633  
TTY: (608) 267-0676

<http://badger.state.wi.us/agencies/etf>

## ***II. WHAT IS AN APPEAL?***

A written determination made by the Department of Employee Trust Funds may be appealed to the Employee Trust Funds Board or one of the four other Boards attached to the DETF. The nature of your appeal determines which Board hears your case. For example, the Group Insurance Board hears an insurance appeal.

An appeal request must be in writing and identify the specific facts or legal interpretations which you believe are in error. When you write your appeal letter, make sure that you include your name, address, phone number and social security number. If your appeal



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concerns another WRS participant, include his/her name and social security number. You should also identify any facts, legal interpretations or pertinent data that apply to your appeal. **The Appeals Coordinator must receive the written appeal request within 90 days of the date of the DETF determination. Appeals should be mailed to the following address: Appeals Coordinator, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.**

In addition to appealing a determination made by the DETF, you may also appeal your employer's determination regarding two specific issues: 1) your employer's decision to report you or not report you as a participating employee in the Wisconsin Retirement System; 2) your category of employment, such as teacher, executive, general, elected official, etc. Appeals of this type are referred to as "direct" appeals because (since 1992) the DETF no longer first makes a determination as to whether or not your employer is correct in their reporting decision. Your appeal is made "direct" to the Board. You may file a direct appeal by writing a letter to the Appeals Coordinator at the above address or you may contact the DETF to obtain a copy of the *Appeal Form* (ET-4938).

Before filing an appeal, you may wish to consider the facts surrounding your case. You should keep in mind that the DETF is required to administer benefit programs in accordance with Wisconsin Statutes. In other words, the DETF, the hearing examiner and the Boards cannot make exceptions to the law in any case or resolve a case in a manner contrary to the law. Likewise, they lack the ability to make a decision because it seems "fair" when the law clearly requires another action. The terms and conditions of some benefit programs are set by contract or administrative rule. You may wish to request and review a copy.

### **III. *ACKNOWLEDGMENT OF YOUR APPEAL***

The Appeals Coordinator will send out an *Acknowledgment of Request for Appeal* to let you know that your appeal has been received. The acknowledgment is furnished as a courtesy to the appellant and other persons who may possibly have an interest in the determination being challenged.

### **IV. *PARTIES***

A "party" in a case refers to a person with a substantial interest in the particular determination being challenged. Other parties to the appeal may include the DETF, any person with an interest in the benefits of the WRS participant, the employer or former employer, the insurance provider, or others with a direct interest.

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## **V. THE HEARING EXAMINER**

The person who presides over the appeal process is called the hearing examiner. The hearing examiner is an independent contractor hired by the Employee Trust Funds Board to conduct hearings concerning appeals and is not an employee of the Department of Employee Trust Funds. The hearing examiners have a variety of experience and an in-depth knowledge of the administrative hearing process.

Because the hearing examiner must listen impartially to the evidence, the hearing examiner will only consider facts and arguments presented when all parties have the opportunity to be present. The hearing examiner will not speak with one party about the case, unless all parties are present or consent to the discussion. If you write to the hearing examiner you must also, at the same time, send a copy of your correspondence to the persons representing the other parties or directly to any person who is not represented.

## **VI. YOUR RIGHT TO BE REPRESENTED**

You may be represented by an attorney, but you are not required to have one. You alone must make this decision. If you decide to be represented, you must choose your own attorney. If you need assistance in choosing an attorney, you may want to contact the Wisconsin State Bar Lawyer Referral Service. If you are represented by a union, your union representative may also be able to assist you. The cost of retaining an attorney is your responsibility.

An advocate who is not a lawyer may represent you. If you decide to be represented by someone who is not a lawyer, such as a union representative, you will be asked to complete a *Limited Power-of-Attorney for Appeal* (ET-4944) form. This document will authorize your representative to act on your behalf in matters relating to your appeal. Contact the Appeals Coordinator to receive a copy of this form.

Do not wait until the last minute before deciding if you want someone to represent you. Make your decision early in the process and, if you decide you want an attorney to represent you, begin looking for one immediately. Many attorneys have cases scheduled months in advance and may not be able to take your case if you wait until the last minute to try to retain someone. If you decide to have an attorney represent you, have him/her send a Notice of Appearance to the Appeals Coordinator.

In order for your attorney or any other person acting on your behalf to receive documents from your WRS participant file or to talk with DETF staff and attorneys about your file, it is necessary for you to complete a disclosure authorization form. You may contact the Appeals Coordinator to obtain a copy of the *Authorization to Disclose Individual Personal Information* (ET-7406) form.



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## ***VII. THE PRE-HEARING CONFERENCE***

A pre-hearing conference on your appeal will be scheduled and you will be notified of the time and place. The pre-hearing conference is an informal discussion between the parties regarding your appeal. Although there will be no testimony taken at the pre-hearing, the hearing examiner will expect the parties to be prepared to determine who the proper parties are, define issues to be resolved, identify factual and legal disputes, and discuss witnesses likely to be called. Following the pre-hearing conference, the hearing examiner issues a memorandum summarizing the discussion between the parties, specifying the issues to be resolved and making any other appropriate orders. This memorandum will control the subsequent course of the appeal. All pre-hearings are held in Madison. You and/or your representative may participate in the pre-hearing conference by telephone if you wish.

Typically the Hearing Examiner will direct the parties to stipulate to as many facts as possible prior to the actual hearing. A stipulation of facts provides a “chronology” of events, documents, correspondence and medical records. The purpose of the stipulation is to list facts the parties agree are true and to identify documents to be admitted into the record.

## ***VIII. THE HEARING***

The purpose of the hearing is to receive testimony of witnesses and admit other relevant evidence offered by the parties. If a hearing is necessary, one is scheduled in the normal order (i.e., appeals are heard on a first-come, first-served basis). Historically there has been a 12-18 month period between the pre-hearing and hearing dates. The hearing examiner normally reserves four hours for the hearing. It is necessary for you, your representative and any witnesses to appear in person at the hearing.

If, for some reason, you feel that your circumstances warrant placing your appeal ahead of other appeals on the calendar, you may request that your case be “expedited.” To do this, you should submit your request to the hearing examiner in writing, sending copies to the other parties, stating the specific reasons that your appeal should be placed ahead of other appeals. The hearing examiner will consider your request and let you know whether it will be granted or denied.

### ***A. Appearing at the Hearing***

You must appear on the date specified in the notice of hearing. If you do not appear, the hearing examiner may interpret your absence as an indication that you no longer wish to pursue the matter and decide to dismiss your appeal or proceed without you. If you no



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longer wish to pursue your appeal, contact the Appeals Coordinator immediately so that your hearing date may be reassigned to another case.

## **B. Witnesses and Subpoenas**

You may want to have one or more witnesses testify on your behalf. If so, you are responsible for having them appear. You may arrange for witnesses to appear voluntarily at the hearing. If a witness will not agree, you may use a subpoena to order the person to appear. Your attorney can prepare a subpoena.

If you are not represented by an attorney, the hearing examiner may sign a subpoena for you. If the hearing examiner signs a subpoena on your behalf, you must arrange to have the subpoena served on the witness. You can do this yourself as long as you prepare an affidavit of service, or you can have it done by the sheriff's office or a private process-server. Along with a subpoena, you must include payment to the witness of a daily fee and mileage for appearing. Each witness must be paid a witness fee of \$5 per day and mileage of 20 cents per mile, round trip, when the subpoena is served. (See Wis. Stat. § 814.67.) It is also a good idea to provide directions to the hearing location. A subpoena may be written to require a witness to bring along specified documents in the possession or control of that witness.

## **C. How a Hearing is Conducted**

A hearing is conducted similarly to a trial, but without a jury. The hearing examiner oversees the hearing and rules on procedure, evidence and objections.

Each party may present testimony and evidence. Usually the party who files the appeal presents his/her testimony and evidence first. Each party is given the opportunity to call witnesses and ask questions (direct examination). Then the other parties may ask questions of the witnesses (cross examination). Finally, each party gets an opportunity to ask follow-up questions (re-direct and re-cross examination).

## **D. Evidence**

Generally, the appellant has the "burden of proof." This means that you must produce witnesses, documentation and/or any other evidence, which will convince the hearing examiner to rule in your favor. In addition, other parties to your appeal, such as the DETF or your employer, may present evidence and witnesses in support of their side of the case.

The evidence presented may be documents or oral testimony from witnesses. Witnesses will be sworn to tell the truth. You may testify yourself, and another party may call you as a witness.



You should be prepared to present evidence that supports the facts of your case. Evidence or facts that are not relevant merely slow down the hearing and may be objected to by the other party and not allowed into the record by the hearing examiner.

Generally speaking, witnesses can testify only about matters of which they have personal knowledge. The hearing examiner may not base a finding of fact on “hearsay.” Although the hearing examiner might allow you to testify about what someone else told you (“hearsay”), your case is stronger if you call that person as a witness.

Expert witnesses are permitted to testify and express their opinions. You may be required to identify, in advance, any expert witnesses you intend to call at the hearing. Expert witnesses may be discussed at the pre-hearing conference.

When you bring documents that you intend to offer as evidence at your hearing, you should bring the original, a copy for the hearing examiner and copies for each party. The hearing examiner will mark the document you offer as an exhibit and will keep this as part of the record of the appeal. It will not be returned to you. A photocopy may be offered instead of the original. Other parties may ask to compare the original to the photocopy.

#### **E. The Transcript**

A court reporter prepares a written transcript of each hearing. You may purchase a copy of the hearing transcript by contacting the Appeals Coordinator and paying a fee. Per ETF § 10.71, Wis. Admin. Code, the charge for a transcript is .25 per page plus a \$3.00 processing fee.

### **IX. RESCHEDULING AND CONTINUANCE**

The hearing examiner will consider a request for postponement or continuance only if received within a reasonable time before the date of the hearing. A postponement or continuance may be granted by the hearing examiner if extraordinary circumstances exist. In addition, a postponement, continuance or extension of time may be granted upon the mutual agreement of all the parties. **Any request for postponement or continuance of the hearing should be made within 10 days after the notice of hearing is sent to you.**

Once the hearing has started, if it becomes apparent that additional time is needed in order to present all of the relevant evidence and testimony, the hearing examiner may continue the hearing to another date.



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## ***X. BRIEFS***

After the hearing, the parties are afforded the opportunity to file written briefs. A brief is an opportunity for you to argue your case in writing. A brief should include reference to the evidence that you believe proves your case and to the laws you believe should apply. However, a brief cannot contain additional evidence or documents that were not admitted as part of the stipulation of facts or at the hearing. All arguments must be based on the evidence in the record.

A brief can be written in the form of a letter that supports your position. There are no rules regarding the length or format for a brief.

The timing for the filing of briefs is usually discussed at the conclusion of the hearing. The parties may agree to a briefing schedule and advise the hearing examiner of the schedule, or the hearing examiner may set the briefing schedule.

## ***XI. THE PROPOSED DECISION***

The hearing examiner is responsible for preparing a proposed decision which makes a finding of all the relevant facts of the case as stipulated or proven, recites the law that governs the case, and applies the law to the facts. The hearing examiner waits until the transcript is prepared and the deadline for filing briefs has passed before writing the proposed decision. This means that the decision may not be completed for some time after the hearing.

When the hearing examiner issues a proposed decision, a copy is sent to you and all other parties. Any party to the appeal aggrieved by the proposed decision may file objections within 20 days. Once the deadline for objections to the hearing examiner's proposed decision has passed, the record of the appeal is copied and delivered to the Board members. All parties involved are notified by mail of the date on which the Board will consider the appeal.

## ***XII. THE FINAL DECISION***

After the proposed decision has been issued, your appeal is placed on the agenda of an upcoming meeting of the appropriate Board. At a scheduled meeting, the Board confers with its own legal counsel regarding the appeal. While parties are welcome to attend the open portions of the meeting, the Board will go into closed session to consider the appeal, as permitted under Wisconsin Statutes, § 19.85(a). The parties cannot participate in the



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closed session. At the conclusion of the meeting, the Board will announce the decision made during closed session. The Board can make any of the following types of decisions:

1. Accept the Hearing Examiner's Proposed Decision and Order;
2. Accept the Hearing Examiner's Proposed Decision and Order with some changes;
3. Adopt a different decision;
4. Remand the appeal back to the Hearing Examiner for further action.

A copy of the final decision is sent to all parties usually within 4-6 weeks after the Board meeting. A notice of appeal rights accompanies it. Any party who disagrees with the final decision may make an appeal to the Dane County Circuit Court for review. Judicial review is by a certiorari action which must be commenced within 30 days after the Board decision to be timely.

### ***XIII. QUESTIONS***

If you have other questions about the appeals process, contact the Appeals Coordinator at (608) 267-2417.

### ***XIV. REASONABLE ACCOMMODATION***

If you are speech, hearing or visually impaired and wish to request any special accommodations during the appeal process, contact the Appeals Coordinator at (608) 267-2417 or TTY (608) 267-0676.

*The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment.*



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## FOR ADDITIONAL INFORMATION

**Write to:**

Department of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707-7931

**Visit:**

**(An appointment is recommended)**

Madison:

801 West Badger Road  
Madison, WI 53702-0011

Milwaukee:

819 North Sixth Street, Room 550  
Milwaukee, WI 53203

**Call:**

Madison:

General: (608) 266-3285  
To make an Appointment: (608) 266-5717  
TTY (Teletypewriter for the Hearing and Speech Impaired): (608) 267-0676

Milwaukee:

(414) 227-4294

**Office Hours:** 7:45 a.m. - 4:30 p.m., Mon.-Fri.  
(except holidays)

**Internet Site:**

<http://badger.state.wi.us/agencies/etf>

**Pre-Recorded WRS Benefit Message Center:** To listen to detailed recorded messages about WRS benefits call 1-800-991-5540. Available 24 hours a day, 7 days a week. **You must have a touch-tone phone to use this system.**

**ALWAYS INCLUDE YOUR NAME, SOCIAL SECURITY NUMBER, AND  
DATE OF BIRTH ON ALL CORRESPONDENCE TO THIS DEPARTMENT.**

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